

§ 1602.12

45 CFR Ch. XVI (10–1–00 Edition)

(2) An explanation of how the exemption applies to the requested records;

(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;

(4) An estimate of the volume of requested matter denied unless providing such estimate would harm the interest protected by the exemption under which the denial is made;

(5) The name and title of the person or persons responsible for denying the request; and

(6) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, including the address of the official to whom appeals should be submitted.

(b) Whenever the Corporation makes a record available subject to the deletion of a portion of the record, such action shall be deemed a denial of a record for purposes of paragraph (a) of this section.

(c) All denials shall be treated as final opinions under § 1602.5(b).

§ 1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within 90 days by writing to the President of the Corporation or, in the case of a denial of a request for Office of Inspector General records, the Inspector General, at the addresses given in § 1602.5(a) and § 1602.8(b). The envelope and letter or e-mail appeal should be clearly marked: "Freedom of Information Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President or designee, or Inspector General or designee, for this purpose.

(c) The decision of the President or the Inspector General on an appeal shall be in writing and, in the event the denial is in whole or in part upheld,

shall contain an explanation responsive to the arguments advanced by the requester, the matters described in § 1602.11(a) (1) through (4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requester within 20 working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(i) and such period taken together with any earlier extension does not exceed 10 days. The decision of the President or the Inspector General shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.5(b).

(d) On an appeal, the President or designee shall consult with the Office of Inspector General prior to reversing in whole or in part the denial of any request for records or portions of records which originated with the Office of Inspector General, or which contain information which originated with the Office of Inspector General, but which are maintained by other components of the Corporation. The Inspector General or designee shall consult with the President prior to reversing in whole or in part the denial.

§ 1602.13 Fees.

(a) No fees will be charged for information routinely provided in the normal course of doing business.

(b) Fees shall be limited to reasonable standard charges for document search, review, and duplication, when records are requested for commercial use;

(c) Fees shall be limited to reasonable standard charges for document duplication after the first 100 pages, when records are sought by a representative of the news media or by an educational or non-commercial scientific institution; and

(d) For all other requests, fees shall be limited to reasonable standard charges for search time after the first 2 hours and duplication after the first 100 pages.

(e) The schedule of charges for services regarding the production or disclosure of the Corporation's records is as follows:

Legal Services Corporation

§ 1602.13

(1) Manual search for and review of records will be charged as follows:

- (i) Band 1: \$10.26 per hour;
- (ii) Band 2: \$16.12 per hour;
- (iii) Band 3: \$25.22 per hour;
- (iv) Band 4-5: \$42 per hour;
- (v) Charges for search and review time less than a full hour will be billed by quarter-hour segments;
- (2) Computer time: actual charges as incurred;
- (3) Duplication by paper copy: 10 cents per page;
- (4) Duplication by other methods: actual charges as incurred;
- (5) Certification of true copies: \$1.00 each;
- (6) Packing and mailing records: no charge for regular mail;
- (7) Special delivery or express mail: actual charges as incurred.

(f) Fee waivers. Fees will be waived or reduced below the fees established under paragraph (e) of this section if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government, the Corporation will consider the following four criteria:

- (i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Corporation or the Federal government";
- (ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of Corporation or Federal government operations or activities;
- (iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and
- (iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute

"significantly" to public understanding of the Corporation or Federal government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) These fee waiver/reduction provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(g) No fee will be charged under this section unless the cost of routine collection and processing of the fee payment is likely to exceed \$6.50.

(h) Requesters must agree to pay all fees charged for services associated with their requests. The Corporation will assume that requesters agree to pay all charges for services associated with their requests up to \$25 unless otherwise indicated by the requester. For requests estimated to exceed \$25, the Corporation will first consult with the requester prior to processing the request, and such requests will not be deemed to have been received by the Corporation until the requester agrees in writing to pay all fees charged for services.

(i) No requester will be required to make an advance payment of any fee unless:

(1) The requester has previously failed to pay a required fee within 30 days of the date of billing, in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. (The request will not be deemed to have been received by the Corporation until such payment is made.); or

(2) The Corporation determines that an estimated fee will exceed \$250, in

Pt. 1603

45 CFR Ch. XVI (10–1–00 Edition)

which case the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within 5 working days of receipt by the Corporation, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet the needs of the requester at a reduced cost. The request will not be deemed to have been received by the Corporation for purposes of the initial 20-day response period until the requester makes a deposit on the fee in an amount determined by the Corporation.

(j) Interest may be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(k) If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Corporation shall aggregate such requests and charge accordingly. Likewise, the Corporation will aggregate multiple requests for documents received from the same requester within 45 days.

(l) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

PART 1603—STATE ADVISORY COUNCILS

Sec.

1603.1 Purpose.

1603.2 Definitions.

1603.3 Composition and term of office of council membership.

1603.4 Procedure for appointment of council.

1603.5 Council purpose and duties.

1603.6 Duties of Corporation upon receipt of notification of violation.

1603.7 Organization and procedural functioning of council.

1603.8 Corporation support of council.

1603.9 Annual report of council.

1603.10 Multi-state recipients.

AUTHORITY: Sec. 1004(f), 88 Stat. 379–380 (42 U.S.C. 2996c(f)).

SOURCE: 40 FR 59351, Dec. 23, 1975, unless otherwise noted.

§ 1603.1 Purpose.

The purpose of this part is to implement section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996c(f), which provides authority for the appointment of state advisory councils.

§ 1603.2 Definitions.

As used in this part, the term—

(a) *Act* means the Legal Services Corporation Act of 1974, Pub. L. 93–355, 88 Stat. 378, 42 U.S.C. 2996–2996f;

(b) *Apparent violation* means a complaint or other written communication alleging facts which, if established, constitute a violation of the Act, or any applicable rules, regulations or guidelines promulgated pursuant to the Act;

(c) *Board* means the Board of Directors of the Legal Services Corporation;

(d) *Corporation* means the Legal Services Corporation established under the Act;

(e) *Council* means a state advisory council established pursuant to Section 1004(f) of the Act;

(f) *Eligible client* means any person financially unable to afford legal assistance;

(g) *Governor* means the chief executive officer of a State;

(h) *Recipient* means any grantee, contractee, or recipient of financial assistance described in clause (A) of section 1006(a)(1) of the Act;

(i) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

§ 1603.3 Composition and term of office of council membership.

A council shall be composed of nine members. A majority of the members